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Before the
FEDERAL COMMUNICATIONS COMMISSION
1919 M St NW
Washington, DC 20554

JUN 27 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re:

| | | |
|-----------------------------|---|-----------------|
| PINPOINT COMMUNICATION |) | WPCY395, et.al. |
| NETWORKS, INC |) | |
| |) | |
| MOBILEVISION L.P. |) | WNWC592, et.al. |
| |) | |
| UNIPLEX CORPORATION |) | WPEF613, et.al. |
| |) | |
| ROGER D. LINQUIST |) | WPFM450, et.al. |
| |) | |
| Licenses for New Facilities |) | |
| in the Multilateration |) | |
| Location Monitoring Service |) | |
| (LMS) |) | |

To: Chief, Wireless Telecommunications Bureau

JOINT REPLY COMMENTS

Comes now Pinpoint Communication Networks, Inc. (Pinpoint), Mobilevision, L.P., (Mobilevision), Uniplex Corporation (Uniplex), and Roger D. Linquist (Linquist), collectively, Joint Commenters, through counsel and pursuant to the Commission's Public Notice of June 7, 1996, DA 96-905, hereby file their Joint Reply Comments.

Only one comment was received, from CellNet Data Systems, Inc. (CellNet). CellNet did not object to the sixty (60) day extension:

"...a sixty day extension, by itself, does not appear to be a significant matter...

"... a simple sixty day extension of the construction deadline would, on its face, appear harmless..."^{1/}

Instead, CellNet raises premature objections to a contemplated merger which has not yet occurred. CellNet ruminates and speculates without citation to fact, competition analysis, or law,⁴ that merger of a few parties in a small undeveloped segment of the much larger mobile communications industry would somehow violate public policy.^{2/}

CellNet's merger comments are not yet ripe for review. On the single question here presented, i.e., the request for a sixty (60) day extension of time to construct, there is no substantial objection; CellNet realizes that the request for sixty (60) days is "not a significant matter" and is "harmless" to the public interest.

^{1/}CellNet Comments, pp. 1-2,5.

^{2/}For a more detailed analysis of the size of the market, see the Commission's discussion at the Third Report and Order in GN Docket 93-252, 9 FCC Rcd 7988 (1995); In re McCaw and AT&T, 9 FCC Rcd 5836, 5843, 5844, n.25 (1995). Since the market for mobile services is large, there would be no substantial lessening of competition from any merger. Also, since the parties are not presently competing in the marketplace, there is no "lessening" of competition. Finally, where a company has experienced losses, or where the only alternatives to merger would be elimination of the entity from the market, the merger would not violate Section 7 of the Clayton Act. See U.S. v. General Dynamics Corp., 415 U.S. 486, 507 (1974); FTC v. National Tea Co., 603 F.2d 694, 699-700 (8th Cir. 1979))

CellNet conveniently overlooks several unique factors beyond the control of the Joint Commenters which justify waiver and the sixty (60) days requested:

1. The parties were required to specify new spectrum, and new operating parameters, under the FCC's new spectrum plan announced in 1995.
2. Completely new licenses were issued in late March, 1996.
3. Construction under the pre-1995 old licenses would have resulted in those licenses being revoked in 1998 rendering them worthless.
4. Critical engineering requirements, such as emission mask rules, were unresolved, making it impossible to construct until the new licenses were received around April 1, 1996.
5. The Commission lists uncontrollable delays, i.e., the furloughs and severe winter weather for the delays in issuing reconsideration and the licenses.
6. No other service is given less than eight months to construct, and complex, single site systems--not as complex as this multi-tower, multi-city construction--generally get a minimum of two to five years to construct.^{3/}

The public interest is served by permitting sufficient time for applicants to construct new complex communications systems to provide service to the public and demonstrate to other non-licensees that there is value in applying for and constructing

^{3/} See First Report and Order in PR Docket 93-144, 11 FCC Rcd 1463 (1995).

LMS systems in this spectrum.^{4/} The extended time requested, as CellNet points out, is not significant. It is also in the public interest for substantial economic investment not to be stranded and wasted as a result of unforeseen delays and problems in crafting a new regulatory system for an admittedly crowded piece of spectrum.

CellNet is also incorrect in speculating that the Joint Commenters have not been actively pursuing financing or preparing for construction. As previously stated, over \$80 million in investment already has been located and spent on pursuing this venture. The parties have pursued diligently investment sources and construction issues. The Joint Commenters, based on discussions with the FCC, expected their applications to be granted no later than September, 1995 and so advised their actual and potential investors. The delay in Commission licensing and resolution of critical issues, no matter how justifiable because of shutdown and snow, added to the unique risks already being assumed and faced by the licensees and their investors, as Part 15 users continue to construct in the spectrum. The delays and unique circumstances which followed were unique to this proceeding and beyond the control of the parties.

^{4/} Where reasons were outside of the licensees control, the FCC has granted construction period extensions to allow SMR licensees a full 12 months to construct facilities, and to "place them in the same posture as other SMR licensees". See e.g. Daniel R. Goodman, Receiver, 10 FCC Rcd 8537, 8549 (1995).

Conclusion

Wherefore, for the reasons stated in the motion and this reply, the parties have demonstrated that the sixty (60) day extension request meets the wavier requirements of the rules and the Commission's public interest concerns.

Respectfully Submitted,

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Its Counsel

MOBILEVISION, LP

By John J. McDonnell RJK
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UNIPLEX, INC.

By

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ROGER D. LINQUIST

By

Roger D. Linquist RJK

CERTIFICATE OF SERVICE

I, Diane Graham, a secretary in the law offices of ROSS & HARDIES, caused to be served via hand delivery this 17th day of June, 1996, copies of the foregoing "Joint Reply Comments" on the following:

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